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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/954,491 | 09/11/2001 | Mark DeRaud | 512.02 | 8054 |

7590 07/02/2004

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EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,491

Applicant(s)

DERAUD ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The 112 second paragraph rejection is hereby withdrawn.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over on "Pizza Inversion" by Brad Appleton for the same reason set forth in the previous office action.

Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Appleton article in view of the Cookbook "Cooking A to Z" for the same reason set forth in the previous office action.

In the response filed 4/27/04, applicant argues the article fails to recognize the problem of allowing pizza to be eaten neatly with one hand and minimize spillage of the toppings and sauce. This argument is not persuasive. Firstly, there is no limitation on eating neatly or minimizing spillage in the claims. Secondly, the article does recognize the problem of spillage by pressing the pieces together to encapsulate the cheese, sauce and toppings. The method of pressing the pieces together requires the use of multiple pieces which would not work with people who only want to consume a single slice. The other method taught is folding lengthwise or folding the pointed end toward the crust. Folding one way does not totally enclosing the sauce and topping; this is readily recognized by one skilled in the art. The combination of folding will give a more total enclosure. Also, the combination of fold will give a smaller configuration which facilitates handling. All these variations would have been readily apparent to one skilled in the art. There is wide variation in the way people consume food products. When both ways of folding are known, the use of the combination of the folds is a variation that would have been readily apparent to one skilled in the art. Applicant further argues

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the article actually teaches away from the claimed method. Applicant cites the example where the article teaches “one needs to be extra careful when using a single slice and/or when the pizza has extra cheese because then excess cheese can easily ooze out the side and burn your mouth”. This disclosure does not teach away from the claimed method; instead, this disclosure recognizes the problem of having topping oozes out. Thus, this provide the motivation for why one would want to form a closed pocket and more foldings to the pizza slice will give a more closed pocket. Applicant further argues the examiner has not shown the motivation or desirability to modify the two separate folds and the combination of the two folds is counter-intuitive because the slice will resist a second fold. The examiner respectfully disagrees with applicant that the rejection does not provide motivation to combine the two folds. The desirability or motivation to combine the folds is set forth above. To reiterate, one would be motivated to combine the folds to form a more closed pocket to prevent toppings and sauce from dripping out and also to reduce the size of the pizza slice which facilitates handling. As to the slice resisting the second fold, applicant has not shown this and if this is true, then the claimed method is not enabling. With respect to the cookbook, applicant argues the cookbook shows a whole pizza with at least cheese throughout the entire surface. While the pizza has cheese throughout the surface, the cookbook does show that the other toppings are limited to certain area. What the cookbook suggest is the versatility in making pizza. For example, it would have been obvious to omit the cheese in one area if one wants to reduce the fat content and calorie of the pizza.

Applicant's arguments filed 4/27/04 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 30, 2004


LIEN TRAN
PRIMARY EXAMINER
